

### **REMARKS/ARGUMENTS**

In the Office Action dated May 9, 2007, the Examiner rejected claims 9, 11-12 and 14 under 35 U.S.C. § 103(a) as obvious over US Pat. No. 5,303,523 to Hand in view of US Pat. No. 2,165,500 to Muirhead. Claim 10 was also rejected under 35 U.S.C. § 103(a) as obvious over Hand in view of Muirhead and further in view of US Pat. No. 4,161,090 to Watts, Jr. Claim 13 was also rejected under 35 U.S.C. § 103(a) as obvious over Hand in view of Muirhead and further in view of US Pat. No. 6,223,463 to Carlson et al. By this amendment, claim 9 is amended and claims 15-28 are added.

Claim 9 has been amended to recite that the plastic cap consists essentially of a topside with a center aperture, a periphery and sidewalls having an inside surface and extending downward at an outward angle from the periphery of the cap. The cap is configured and dimensioned to cover the top end of the pier with a rod extending through the center aperture, such that the inside surface of the sidewalls do not contact the exterior walls of the pier. The Applicant maintains that a combination of a cap and pier as recited in claim 9 is not taught or suggested by the cited prior art. Hand includes side walls (20, 20A) that clearly contact supporting structures (199, 200, 200A, 200B, 200C, 200D and 200E) that correspond to the pier in claim 9. Therefore, the claimed invention is a simplified structure in comparison to that of Hand, providing clear advantages in ease of manufacture.

Similarly, claim 9 also distinguishes over Muirhead, which also includes structures not found in the recited invention. Specifically, Muirhead includes “a pair of cooperating elements 15, 16 in the nature of nuts” (page 2, column 1, lines 13-15) which are necessary to form “a tight metal-to-metal seal” to prevent the passage of termites (page 2, column 2, lines 20-21). Therefore, the claimed invention is also a simplified structure in comparison to that of Muirhead.

Therefore, neither Hand nor Muirhead teach or suggest all of the limitations of claim 9, indicating that even if one of skill in the art combined the teachings of these references, the claimed invention would not be the result. Furthermore, the passage of time between

the issuance of Muirhead (1939) and that of Hand (1994), as well as the additional lapse of ten years before the filing of the present application, further indicates that one of skill in the art would not have found it obvious to combine the teachings of Hand and Muirhead at the time of the claimed invention to arrive at the claimed invention.

Likewise, neither Watts, Jr. nor Carlson teach or suggest the termite deterrent combination recited in claims 9-16, as both of these references also disclose structures with side walls that contact the sides of the supporting structures. Therefore, claim 9, and claims 10-16 which depend from and include all the limitations of claim 9, patentably distinguish over Hand, Muirhead, Watts, Jr. and Carlson, either individually or in combination. Withdrawal of the rejection under 35 U.S.C. § 103(a) is respectfully requested.

New claims 17-28 have been added. Support for new claims 17-23 may be found in the drawings, which clearly provide a flat platform structure, having a top surface, a bottom surface and a peripheral edge, one or more sidewalls attached to the peripheral edge of the platform structure and extending downward at an outward angle from the peripheral edge of the platform structure and wherein the cap is adapted to be placed on a post and wherein the cap is dimensioned to cover the top end of the post, such that there is no contact between any inside surface of the sidewalls and the exterior walls of the post. Support for new claims 24-28 may also be found in the drawings and on page 5, line 4 to page 6, line 2 and page 7, lines 14-21 of the specification. The added claims are believed to be allowable for the reasons set forth above.

At least claims 9, 17 and 24 are believed to be generic for both of the species previously identified by the Examiner. These claims are believed to be allowable. Therefore rejoinder and allowance of withdrawn claims 12, 21 and 28 is also requested.

The outstanding Office action was mailed on May 9, 2007. The Examiner set a shortened statutory period for reply of 3 months from the mailing date. Therefore, a petition for an

extension of time (three-months) is hereby made with this response. In this response, no claims have been cancelled and claims 15-28 have been added. As a result, 20 claims, 3 of which are independent claims, are currently pending. Therefore, no additional fees are believed to be due for added claims. The Commissioner is authorized to charge any fee or to credit any overpayment associated with the filing of this paper to Deposit Account 15-0450.

Respectfully submitted,

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